

Order

Michigan Supreme Court
Lansing, Michigan

April 5, 2005

Clifford W. Taylor
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

ADM File No. 2003-04

Proposed Amendment of
Rule 7.205 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.205 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted on the Court's website at www.courts.mi.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 7.205 Application for Leave to Appeal

(A)-(E)[Unchanged.]

(F) Late Appeal.

(1)-(2)[Unchanged.]

(3) Except as provided in subrule (F)(4), leave to appeal may not be granted if an application for leave to appeal is filed more than ~~12~~ 6 months after the later of:

(a) entry of a final judgment or other order that could have been the subject of an appeal of right under MCR 7.203(A), but if a motion described in MCR 7.204(A)(1)(b) was filed within the time prescribed in that rule, then the ~~12~~ 6 months are counted from the entry of the order denying that motion; or

- (b) entry of the order or judgment to be appealed from, but if a motion for new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period, then the ~~12~~ 6 months are counted from the entry of that order denying the motion.
- (4) The limitation provided in subrule (F)(3) does not apply to an application for leave to appeal by a criminal defendant if the defendant files an application for leave to appeal within 21 days after the trial court decides a motion for a new trial, for judgment of acquittal, to withdraw a plea, or for resentencing, if the motion was filed within the ~~12~~ 6-month period, or if
 - (a) the defendant has filed a delayed request for the appointment of counsel pursuant to MCR 6.425(F)(1) within the ~~12~~ 6-month period,
 - (b) the defendant or defendant's lawyer, if one is appointed, has ordered the appropriate transcripts within 28 days of service of the order granting or denying the delayed request for counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(F)(2), and
 - (c) the application for leave to appeal is filed in accordance with the provisions of this rule within 42 days after the filing of the transcript. If the transcript was filed before the order appointing or denying the appointment of counsel, the 42-day period runs from the date of that order.

A defendant who seeks to rely on one of the exceptions in subrule (F)(4) must file with the application for leave to appeal an affidavit stating the relevant docket entries, a copy of the docket or calendar entries, or other documentation showing that the application is filed within the time allowed.

(5) [Unchanged.]

(G) [Unchanged.]

Staff Comment: The April 5, 2005, proposed amendment of MCR 7.205(F)(3) would reduce the time for filing a late application for leave to appeal from the current

deadline of 12 months from the entry of the final judgment or order appealed from or entry of an order resolving a timely filed postconviction motion to a deadline of 6 months from the entry of such orders. The proposed amendment of MCR 7.205(F)(4) would implement a 6-month deadline that corresponds to the reduction in subrule (3). The 6-month deadline in subrule (4) would make the limitation in (F)(3) inapplicable where the defendant files a postconviction motion within 6 months of the judgment or order appealed from and filed an application for leave to appeal within 21 days of the decision on a postconviction motion or if the defendant sought the appointment of counsel within 6 months of the order appealed from, counsel ordered the transcripts within 28 days of the appointment order, and defendant files an application for leave to appeal within 42 days of the filing of the complete transcripts or within 42 days of the order appointing counsel if the transcript was filed before entry of that order.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by August 1, 2005, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2003-04. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 5, 2005 Angela J. Meyer
Deputy Clerk